

## **MINUTES**

### **MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON HIGHWAYS AND TRANSPORTATION**

**Call to Order:** By **CHAIRMAN ARNIE MOHL**, on February 17, 2001 at 12:15 P.M., in Room 317-A Capitol.

#### **ROLL CALL**

**Members Present:**

Sen. Arnie Mohl, Chairman (R)  
Sen. Ric Holden, Vice Chairman (R)  
Sen. Dale Berry (R)  
Sen. Vicki Cocchiarella (D)  
Sen. Bob DePratu (R)  
Sen. Dan Harrington (D)  
Sen. Sam Kitzenberg (R)  
Sen. Gerald Pease (D)  
Sen. Glenn Roush (D)

**Members Excused:** Sen. Jerry O'Neil (R)

**Members Absent:** None.

**Staff Present:** Connie Erickson, Legislative Branch  
Marion Mood, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: SB 451, 2/13/2001; SB 448,  
2/13/2001  
Executive Action: SB 348; SB 451; SB 448

#### **HEARING ON SB 451**

**Sponsor:** SEN. ROYAL JOHNSON, SD 5, BILLINGS

**Proponents:** NONE

**Opponents:**           **NONE**

**Opening Statement by Sponsor:**

**SEN. ROYAL JOHNSON, SD 5, BILLINGS**, opened by saying that with SB 451, he would eliminate the requirement of a valid driver's license when operating a certain kind of bicycle. He referred to **EXHIBIT (his40a01)** and explained his bill would also repeal section (2) of statute 61-1-123, dealing with engine size and maximum power limits. He explained that this proposal originated with the story of a friend's father who, for whatever reason, did no longer have a valid driver's license but did not want to give up his mobility. He was given a three-wheeled bicycle which he rode until his health would no longer allow him to peddle uphill, and his son installed a small motor, much like that of a moped's, which assisted his pedaling. This enabled him to go 30 mph on a level surface and maybe 10 or 15 mph uphill. He stressed that SB 451 was confined to this kind of bike, not high-powered motorcycles or the like.

**Questions from Committee Members and Responses:**

**SEN. GLENN ROUSH** asked if kids' 3- and 4-wheelers were covered under this bill. **SEN. JOHNSON** replied that they were not. **SEN. DALE BERRY** wondered if there was an accident rate for these types of bikes, and **SEN. JOHNSON** said he had no data but doubted that there had been any collisions; the size of their engines made them very slow, and thus safe. **VICE CHAIRMAN RIC HOLDEN** inquired if mopeds had to have a license plate. **SEN. JOHNSON** confirmed that but said his bill dealt with a driver's license, and not the plates. **SEN. BOB DEPRATU** mentioned that there was a separate law dealing with these low-powered bikes on freeways. **SEN. VICKI COCCHIARELLA** asked why the statute was put into law in 1983. **SEN. JOHNSON** declined knowledge. **CHAIRMAN ARNIE MOHL** wanted confirmation that people had to have a license to operate one of these bicycles, and **SEN. JOHNSON** stated that they did, and that was the problem he addressed with this bill. He repeated that sometimes a person would not be able to pass a driver's license test and thus would be denied a license. This person, then, would not be able to drive a car, but could get around on one of these bikes. **CHAIRMAN MOHL** painted a scenario where someone had their license revoked; would that person then be able to operate a motorcycle. **SEN. JOHNSON** replied that one has to have a valid driver's license and a motor-cycle license to operate a motor cycle, and these small mopeds are not motorcycles. **CHAIRMAN MOHL** then asked how one could distinguish one from the other, given the fact that some motorcycles are quite small. **SEN. JOHNSON** said that the definition is in the statute, and repeated

that the bikes covered in his proposal are defined as bicycles. **SEN. DEPRATU** felt that the use of these bikes will be increasing, and that electric units in the same power range are being built because they are environmentally friendly and serve a purpose for a growing sector of the population. **CHAIRMAN MOHL** feared that some time in the future, these bicycles could be made to go 70 mph. **SEN. JOHNSON** answered then they would fall under current law which requires a driver's license and a motorcycle license of the operator.

**Closing by Sponsor:**

**SEN. JOHNSON** closed on SB 451.

**HEARING ON SB 448**

**Sponsor:** **SEN. B.F. "CHRIS" CHRISTIAENS, SD 23, GREAT FALLS**

**Proponents:** **Noel Larriavee, Montana Transit Association**  
**Wally Melcher, DDSAC**  
**Verner Bertelsen, Montana Senior Citizen Assn.**  
**Evelyn Harskjold, County Aging Services**  
**Chuck Notbohm, AARP**

**Opponents:** **Ronna Christman, MT Petroleum Marketers' Assn.**  
**Gail Abercrombie, Director, Petroleum Marketers'**  
**Association**

**Opening Statement by Sponsor:**

**SEN. CHRIS CHRISTIAENS, SD 23, GREAT FALLS**, stated that SB 448 would provide funding for transportation services for senior citizens and people with disabilities. He explained that communities with public transit authorities are required to provide transportation to the elderly and disabled during the same hours regular transportation operates. Because of the ever-growing number of seniors, there is a growing need for funding for these services. One of these funding mechanisms was the license plate tax, but due to our new law, that source went down to almost nothing. In Great Falls alone, the amount collected from the tax was almost \$144,000, and now it is barely \$40,000. In looking for other funding sources, the sponsor came to consider the portion of the fuel tax that fuel distributors are allowed to keep. This portion is 1% of the fuel tax they collect for the State of Montana, and **SEN. CHRISTIAENS** wanted to divert one half of that 1% to provide funding for the transportation

service. This way, the funding would not have to come out of the general fund. He referred to **Jeff Martin, Research Analyst, Legislative Service Division**, who prepared Amendment#SB044801.ajm, **EXHIBIT(his40a02)** and asked him to explain the amendments to the committee.

**Jeff Martin** stated that in the original bill draft, the allocation of the funds cut into the special revenue fund which was unacceptable, and that was why these amendments were drafted.

**Proponents' Testimony:**

**Noel Larrivee, Montana Transit Association**, handed out **EXHIBIT(his40a03)**, consisting of supporting letters and statistical data, the latter being derived from an extensive study. This study measured the disparity between people who have full mobility and those who, by varying degrees, do not. He pointed out that 10% of Montana's population is 60 years old or older, and people with disabilities represent an additional sector. He stated that the needs of these two groups are not being met due to money constraints. He doubted that these needs would be met fully by SB 448 but it was a step in the right direction. He then offered one copy of a directory compiled by the Department of Transportation which lists the service providers and the federal funding sources **EXHIBIT(his40a04)**, and said that SB 448 would supplement these providers, with 50% being earmarked for rural counties. In addition to the federal monies, seniors are allowed a 1-mill-levy to supplement transportation but this is not enough to cover operating expenses, namely for buying the gas and paying the drivers. He implored the committee to pass this bill so the elderly and the disabled would have some mobility and dignity restored to them.

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**Wally Melcher, DDSAC**, stated that in his constituency, there were 4,000 people with developmental disabilities, and over 8,000 people with vocational rehabilitation needs, and transportation is one of their biggest need. He identified three areas of primary need, one being in more urban communities where there is a public transportation system, with regards to the hours of operation. Oftentimes, nothings runs after 5 p.m., and there might not be transportation on the weekends, or the routes are such that a person with disabilities cannot use them. This could interfere with some types of jobs and prohibit people from applying for or holding down a job. Secondly, in rural areas there is room for creative solutions, and he suggested a voucher system by which riders could pay. The third area is a family-style transportation system such as vans picking people up at group homes. Many of these organizations are operating at a

loss, often the vehicles are old, and they are in need of funding to improve their services.

**Verner Bertelsen, Montana Senior Citizens Association**, stated his support for SB 448 for the aforementioned reasons. He said the bill raised a side issue, and that being that the cost to the taxpayer is a lot less when the elderly or disabled can remain in their own homes and just need some help in getting around.

**Evelyn Harskjold, County Aging Services**, told the committee that her hometown of Havre recently lost both their taxi and bus service, and this has put a burden on the senior transportation program which provides services to able-bodied seniors as well as to the handicapped. Because of money constraints, it only operates four days a week, meaning there is no transportation on Wednesdays or weekends for the more than 1,000 people who use it. She then read a letter **EXHIBIT(his40a05)** to illustrate the need for transportation funding. She went on to say that 70% of the area's seniors have no relatives living within 300 miles meaning they cannot provide additional transportation. Lastly, she handed the secretary a small stack of letters written in support of SB 448 **EXHIBIT(his40a06)**.

**Chuck Notbohm, AARP** stated his organization's support of SB 448.

#### **Opponents' Testimony:**

**Ronna Christman, Petroleum Marketers' Association**, stated that out of the more than 200 members of the MPMA, 53 fit the description of "licensed distributor" who are the ones collecting the fuel tax for the state of Montana. She covered some of the history of the fuel tax and the tax "allowance" going back to 1952. In 1987, the amount her industry was allowed to keep was changed to 1% of the total tax collected, based on the licensed distributor's purchases of fuel, not his sales. She pointed out that there are some retailers who are recovering the tax but who are not allowed to keep the 1%. She explained that the money is used to defer administrative expenses incurred by collecting the tax and for monthly tracking reports prepared for the Department of Transportation. She also mentioned that licensed distributors have to be bonded, and that most of them are required to have a \$100,000 bond which means they have to show assets of twice that amount, and they use this money to collateralize their assets. She maintained that these businesses would be severely weakened by the one-time cash infusion of \$30,000 to \$80,000 they have to make if this bill passes. She empathized with the problems seniors and the disabled are facing with regards to transportation availability but questioned why her industry was singled out. She also addressed the possibility that these

monies will not be adequate in the future, and then who would be made to pay for it. The practice of letting industries keep part of the tax collected is wide-spread, but the amounts vary by state. In closing, she mentioned the two other industries who are responsible to collect taxes for the state, namely alcohol and tobacco. The wholesalers' discount for tobacco tax collection is 5%, and the MDOR collectors keep 3%.

**Gail Abercrombie, Exec. Dir., Montana Petroleum Association,** stated that she has defended the 1% tax allowance many times before. In the great scheme of things, the 1% allowance is low compared with other states but will have a substantial impact on the small and medium-sized distributors.

#### **Informational Testimony:**

**Pat Saindon, MDT,** informed the committee that her division would be responsible for administering the program if SB 448 passed, and said she would be available to answer any questions.

**Charlie Rehbein, Bureau Chief for Aging Services, Pubic Health and Human Services,** said he, too, was available to answer questions.

#### **Questions from Committee Members and Responses:**

**SEN. SAM KITZENBERG** asked what the long range forecast was for the fuel tax. **Pat Saindon** replied that this bill had no impact on the department or the state's special revenue account.

#### **Closing by Sponsor:**

**SEN. CHRIS CHRISTIAENS** presented **EXHIBIT(his40a07)**, a letter which was just handed to him. He explained that he had thought long and hard about a possible funding source for SB 448, and considered this tax allowance because it tied in with transportation. All of the vans, cars, and shuttle busses use fuel. He then quoted from federal law: "Accessibility is a civil right. The key function of transportation at its most fundamental level is to provide basic mobility to society."

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He closed by saying the longer we can keep people mobile and living in their own homes the smaller the burden on the tax rolls.

#### **EXECUTIVE ACTION ON SB 348**

**Pat Keim, Burlington Northern & Santa Fe, and Russ Ritter, Montana Rail Link**, were present to answer any questions concerning the amendments.

**VICE CHAIRMAN RIC HOLDEN** informed the committee that since the tabling of SB 348, he had the opportunity to discuss the issue further to try and make it workable, and he wondered if the committee would support him in bringing SB 348 back.

**Motion:** SEN. HOLDEN moved **SB 348 be brought back from the table.**

**Vote:** Motion carried 8-0, with SEN. HARRINGTON excused.

**VICE CHAIRMAN HOLDEN** handed out two amendments **EXHIBIT(his40a08)** and **EXHIBIT(his40a09)**, #SB)034801.alk and a hand-written one (due to the ongoing computer problems). He explained that with the amendments, it is required that the trains sound their horns at public crossings, but at private crossings it would be at the discretion of the person who owns or primarily uses the crossings. He said the engineer would know which way to go because of the indicator signs that are put up for them at the rail crossings. This addresses the concern regarding private crossings because it allows every permit holder of a private crossing to individually request what he deems best.

**Motion:** SEN. HOLDEN moved that **AMENDMENTS TO SB 348 BE ADOPTED.**

#### **Discussion:**

**SEN. DEPRATU** agreed that this made it a workable bill which he would support. **SEN. ROUSH** asked if a crossing could still be considered "private" if a rancher sub-divided his land and other families used the crossing on his road. **VICE CHAIRMAN HOLDEN** referred the question to **Mr. Keim**, who replied that on a private crossing, there is an individual or private party who holds the permit for that crossing which designates it as being private, and that permit holder is responsible for that crossing. He explained that the hand-written amendment said if this permit holder wants the railroad to sound their horn at that crossing, he would have to submit a written request to the railroad, and they would be obligated to do so. He went on to say that the permit holder is the only one responsible, and the only one who can make that decision, and if other people are using it, it should be made a public crossing. **SEN. KITZENBERG** addressed the issue of liability by asking if the railroad did not assume liability when the horn was sounded, and how it would affect someone other than the permit holder if he got hit. **Mr. Keim** said he was not sure if he could completely answer these questions, and maintained that on private crossings, the holder of the permit has the responsibility, even though it did not always absolve the railroads from liability. **Russ Ritter** explained that the liability portion had been taken out of this

bill, and that whatever liability existed before was still applicable. **SEN. DEPRATU** inquired whether the railroads would notify the private permit holders of this option, and **Russ Ritter** replied that they would.

**SEN. COCCHIARELLA** called for the question on the amendment.

**Motion carried 9-0, with SEN. HARRINGTON voting aye by proxy.**

**Motion/Vote:** **SEN. HOLDEN** moved that **SB 348 BE PASSED AS AMENDED.**

**Motion carried 8-1 with Pease voting no and SEN. HARRINGTON voting aye by proxy.**

#### **EXECUTIVE ACTION ON SB 451**

**Motion/Vote:** **SEN. DEPRATU** moved that **SB 451 DO PASS.** **Motion carried 9-0, with SEN. HARRINGTON voting aye by proxy.**

#### **EXECUTIVE ACTION ON SB 448**

**Motion:** **SEN. HOLDEN** moved that **SB 448 BE TABLED.** This being a non-debatable motion, he offered to **withdraw his motion** seeing that **CHAIRMAN MOHL** leaned towards giving the committee a chance to discuss it.

**Motion:** **SEN. ROUSH** moved that **SB 448 DO PASS.**

**Connie Erickson** reminded the committee of Amendment #SB044801.ajm, entered previously as Exhibit (2).

**Substitute Motion:** **SEN. ROUSH** made a substitute motion that **AMENDMENT TO SB 448 BE ADOPTED.**

**Vote:** Substitute motion that **AMENDMENT TO SB 448 BE ADOPTED carried 9-0.**

**Motion:** **SEN. ROUSH** moved that **SB 448 DO PASS AS AMENDED.**

#### **Discussion:**

**SEN. ROUSH** agreed with the reluctance to pass this bill because of the funding source, but he also saw the need for these services. He admitted he was not sure how much of this funding could be picked up by private enterprise but he would vote for this bill. **SEN. COCCHIARELLA** also voiced concerns with the funding source. She felt there should be some effort made to look for a different funding source, one that would not impact private business. She said she would almost be willing to raise the gasoline tax to help this bill pass and maintained the problem addressed in SB 448 impacts all of us. She said we will end up subsidizing people in long-term care facilities because it



becomes a matter of life or death if they have no way to get around to buy their groceries or see their doctors; she called it penny-wise and pound-foolish. **SEN. BERRY** agreed with **SEN.**

**COCCHIARELLA** that the service was very much needed but the funding source was wrong. **SEN. KITZENBERG** felt that taking \$30,000 to \$80,000 out of the cash flow might very well put a distributor out of business. **VICE CHAIRMAN HOLDEN** stated that the transportation districts had other alternatives. He recounted that the commissioners in his district added a ballot enabling the people to vote for a mill levy for a transportation district, and the people gave them the funds to do it with. He felt this bill was not necessary because local districts could take care of it themselves. **SEN. COCCHIARELLA** asked someone to respond to **SEN. HOLDEN'S** point of view. **SEN. CHRISTIAENS** stated that yes, you could fund up to 12 mills in a transportation district, and pointed to the fact that there were three in the state, none in Havre, none in Hamilton or most other communities. He also pointed out that the disabled qualify for "para-transit services", meaning one could not charge more for para-transit than the regular bus route, and in Great Falls that meant 25 cents, which is the charge to seniors. This means that for a \$15 taxi cab fee, only 25 cents can be charged, and that is why it is so important to have an established senior and disabled service.

**SEN. KITZENBERG** asked if he understood correctly that distributors were going to be taxed for this and possibly put out of business. **SEN. CHRISTIAENS** reiterated that distributors are allowed to retain 1% of the tax they collect which represents \$1.8 million, and SB 448 asked for only half of it. **VICE CHAIRMAN HOLDEN** asked why communities like Havre do not have transit authorities. **SEN. CHRISTIAENS** replied that it came back to the question of funding, and these communities had no way of funding the purchase of vehicles or the services, especially in light of the fact that aging services have been faced with ongoing cuts. **VICE CHAIRMAN HOLDEN** submitted to the committee that the reason why some communities do not have these services is because there is no support to pass the required mill levies. He wondered, then, why we should be sending money their way when they themselves do not deem the program worthy of theirs.

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**SEN. COCCHIARELLA** and **SEN. DEPRATU** introduced an idea they had been discussing, and **SEN. DEPRATU** wondered if there was any way of tying this bill to his SB 191 relating to the purchase of specialty license plates. **SEN. COCCHIARELLA** elaborated that a fee could be attached to the sale of these plates and be designated to go to this transportation funding which would then make it voluntary. **CHAIRMAN MOHL** wondered if the counties would funnel the monies to the proper places, and **SEN. DEPRATU** wanted to ask **Ms. Erickson** if it was possible to tie these bills

together. **Ms. Erickson** stated that SB 191 would have to be amended as well as SB 448, and the two would have to be coordinated to make sure that if both pass, it becomes law, but if SB 191 does not pass, the other one cannot, either. She assured the committee that it was certainly possible. **SEN. BERRY** wondered if there was any estimate how many plates would be bought, or what kind of "surcharge" would have to be put on them to satisfy funding. **VICE CHAIRMAN HOLDEN** felt that the specialty license plate programs would be jeopardized because they would cost more, but then some of the money would be syphoned off to fund this transportation service. **SEN. DEPRATU** added only an additional \$2 fee would be added to those plates. **SEN. BERRY** wondered if this would not be too much, in a four-year period. **SEN. DEPRATU** said the fee would have to be paid every time a license plate is renewed, which would make it an annual fee. **VICE CHAIRMAN HOLDEN** asked to re-make his motion to table because to try and patch the bill together now would be tough; he felt that a new bill should be introduced, dealing with all the new factors that had been added.

**Substitute Motion/Vote:** **SEN. HOLDEN** made a substitute motion that **SB 448 BE TABLED**. Substitute motion failed 5-5 with **Cocchiarella, Harrington, Kitzenberg, Pease, and Roush** voting no on a roll call vote, with **SEN. HARRINGTON** voting by proxy.

**SEN. COCCHIARELLA** asked that the committee meet again to take up another executive action on SB 448 which was in limbo at this point. **CHAIRMAN MOHL** thought he might not be able to get all the members together if they had other commitments in the last few days before transmittal.

**Note:** Amendment #SB034801.alk **EXHIBIT(his40a10)**, combining the two amendments as in Exhibits (8) and (9), was handed in to the secretary after adjournment.

#### **ADJOURNMENT**

Adjournment: 2:10 P.M.

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SEN. ARNIE MOHL, Chairman

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MARION MOOD, Secretary

AM/MM

**EXHIBIT** (his40aad)